IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1712 OF 2005

Harish Shigwan & 11 ors. Petitioners
vs.
Govenment of India & anr. Respondents

Mr.Arshad Shaikh with Mr.T.R.Yadav for the petitioners.

Ms.Ritu Singh i/b.Mr.S.S.Pakale for respondent no.1.

Mr.Sanjeev Pundekar i/b.Mr.M.Janardhanan for respondent no.2.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 14th November, 2006

P.C.

Rule. Heard forthwith.

2. All the petitioners had taken voluntary retirement in a scheme which was announced by respondent no.2. The amount, in terms of the VRS scheme was either to pay them or adjust it in their Bank account as most of them had housing loans.

3. It is the case of the petitioners that they were orally informed at the time they accepted the VRS settlement that respondent no.2 would waive their housing loans. The housing loans range from about Rs.50,000/- onwards to about Rs.4,00,000/-. The petitioners thereafter approached the Conciliation officer on the ground that fraud has been practiced on them inasmuch as in respect of some of the employees based on their oral understanding the housing loan has

been waived and it has not been done in the case of the present petitioners. It is therefore submitted that on account of the same the entire VRS agreement is null and void and the matter ought to be referred to an industrial adjudicator. The conciliation officer submitted his failure report. The appropriate Government however in the exercise of their power under Section 12(5) of the ID Act has refused to make a reference on the ground that there is no industrial dispute. It is this order which is the subject matter of the present petition.

4. We have heard the learned counsel for the petitioners as also the respondents and the reply filed on behalf of respondent no.2. We find from the reply which is filed that in case of four employees, respondent no.2 had granted ex-gratia of Rs.50,000/- and in case of one of the employee loan amount was allowed to be paid at the rate of 2% per annum. It is explained that this was based on the agreement which the said employee Ashok Bhattacharya had entered into with the Bank.

5. The question is whether the decision of the appropriate Government ought to be interfered for failure to make a reference. It is now settled law that the order passed under section 12(5) of ID Act is an administrative order. It is also settled law that appropriate Government would not normally decide whether

there is an industrial dispute or whether the persons are the workman or whether it is an industry within the meaning of the ID Act. These are issues to be left for decision by the industrial adjudicator unless there is a strong prima facie material on record which would result in holding either that there is no industrial dispute or that the persons concerned are not workmen or that it is not industry within the meaning of ID Act.

6. In the instant case, the petitioners have retired by accepting the VRS scheme. The only plea is of fraud based on the purported oral agreement. The material on record would clearly demonstrate that this would not fall within the definition of industrial dispute under Section 2(k) of the ID Act. If, it is the case of the petitioners that the agreement with the employer is a creature of the fraud, they can if they are entitled to challenge the same in a Civil Court or other civil proceedings. Once that be the case, we are of the opinion that the decision by respondent no.1 in refusing to make a reference does not suffer from any illegality. Consequently, no interference is called for. Petition is dismissed accordingly. Rule is discharged. No costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)